DRAFT LEGISLATION

Recommendation 3

SHARING OF INFORMATION BY THE MEDICAL BOARD

AN ACT authorizing the release of investigative materials to state agencies charged with the responsibility to investigate health insurance fraud, and amending P.L.1983, c. 248.

BE IT ENACTED by the Senate and the General Assembly of the State of New Jersey:

1. Section 3 of P.L.1983, c. 248, as amended by section 21 of P.L.1989, c. 300 (C.45:9-19.3), is amended to read as follows:

3. Any information concerning the conduct of a physician or surgeon provided to the State Board of Medical Examiners pursuant to section 1 of P.L.1983, c. 248 (C.45:9-19.1), section 5 of P.L.1978, c. 73 (C.45:1-18) or any other provision of law, is confidential pending final disposition of the inquiry or investigation by the board, except for information required to be shared with the **[**Division of Insurance Fraud Prevention**]** **Office of Insurance Fraud Prosecutor** in the Department of **[**Banking and Insurance**]** **Law and Public Safety** to comply with the provisions of section 9 of P.L.1983, c. 320 (C.17:33A-9) or with any other law enforcement agency. If the result of the inquiry or investigation is a finding of no basis for disciplinary action by the board, the information shall remain confidential, except that the board may release the information **in its investigative file** to **[a] another** governmental agency**[**, for good cause shown, upon an order of the Superior Court after notice to the physician or surgeon who is the subject of the information and an opportunity to be heard. The application for the court order shall be placed under seal**]** **in furtherance of that agency's statutory or regulatory responsibilities**.

Recommendation 4

TRUTH IN MEDICAL BILLING

Adopting a statute addressing "Truth in Medical Billing" which would require disclosure in plain language of all medical bills to the patient receiving the service.

AN ACT revising parts of statutory law and requiring disclosure in plain language of all medical bills to the patient receiving the service.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act may be cited as the "Truth in Medical Billing Act."

2. As used in this act:

"Health Care Service" means any examination, evaluation, treatment, care, test, service, product, drug, device, equipment, or other item, which is provided or rendered by any person in connection with the diagnosis and treatment of any human ailment, disease, pain, injury, deformity, mental or physical condition which may be eligible for payment or reimbursement by an insurance company or other payor entity.

"Insurance company" means:

a. Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes (C.17:17-1 *et seq.*), or Subtitle 3 of Title 17B of the New Statutes (C.17B:17-1 *et seq.*);

b. Any medical service corporation operating pursuant to *P.L.*1940, *c.* 74 (C.17:48A-1 *et seq.*);

c. Any hospital service corporation operating pursuant to *P.L.*1938, *c.* 366 (C.17:48-1 *et seq.*);

d. Any health service corporation operating pursuant to *P.L.*1985, *c.* 236 (C.17:48E-1 *et seq.*);

e. Any dental service corporation operating pursuant to *P.L.*1968, *c.* 305 (C.17:48C-1 *et seq.*);

f. Any dental plan organization operating pursuant to *P.L.*1979, *c.* 478 (C.17:48D-1 *et seq.*);

g. Any insurance plan operating pursuant to *P.L.*1970, *c.* 215 (C.17:29D-1 *et seq.*);

h. The New Jersey Insurance Underwriting Association operating pursuant to *P.L.*1968, *c.* 129 (C.17:37A-1 *et seq.*);

i. The New Jersey Automobile Full Insurance Underwriting Association operating pursuant to *P.L.*1983, *c.* 65 (C.17:30E-1 *et seq.*) and the Market Transition Facility operating pursuant to section 88 of *P.L.*1990, *c.* 8 (C.17:33B-11); and

j. Any risk retention group or purchasing group operating pursuant to the "Liability Risk Retention Act of 1986," 15 U.S.C. § 3901 *et seq.*

"Other Payor Entity" means any corporation, association, partnership, organization, including but not limited to a managed care organization as defined in *N.J.A.C.* 11:6-2.2, or other person, not covered under the definition of "insurance company" contained in this subsection, which is lawfully engaged in New Jersey in paying for or reimbursing, whether on its own behalf or in a capacity as

a third-party administrator, the cost of health services provided in this State under insurance policies or contracts, membership or subscription contracts, or the like, in consideration of premiums or other periodic charges payable to such entity or to an insurance company.

"Patient" means an individual who is represented as being the recipient of any health care service.

"Person " means any corporation, association, partnership, trust, other institution or entity, health care facility as defined in subsection a. of section 2 of *P.L.*1971, *c.* 136 (C.26:2H-2a), or one or more individuals.

"Provider" means any person who has provided or rendered any health care service and may be eligible for payment or reimbursement for that service by an insurance company or other payor entity.

3. (NEW SECTION) a. Insurance companies and other payor entities that provide reimbursement for health care services rendered to patients shall develop and utilize an Explanation of Services Rendered Form, which the insurance company or other payor entity shall provide to the patient within thirty days of the date on which the insurance company or other payor entity receives a claim for payment for a health care service from the provider who rendered the service. This form shall include the following:

(1) the full name and address of the patient;

(2) the full name and address of the provider and the street address of the location where the service was actually provided. A post office box shall not suffice as the entry for street address;

(3) a plain language description of each service for which a request for payment has been made. If the form lists services by more than one provider, there shall be separate lists of the services provided by each separate provider;

(4) the date on which each service was provided;

(5) the amount billed for each service;

(6) the claim number;

(7) a disclaimer notice advising "THIS IS NOT A BILL," appearing in boldfaced, capital letters of not less than twelve (12) point type size, which notice shall be set forth at both the top and bottom of the form; and

(8) a prominent statement instructing the patient to carefully review the health care services listed thereon and to immediately contact the insurance company or other payor entity if the patient did not receive one or more of the services listed or has a question related to any aspect of the services, which statement shall include a contact address and toll-free telephone number.

b. If the patient is under eighteen years of age, the insurance company or other payor entity shall provide the Explanation of Services Rendered Form to the patient's parent or legal guardian.

4. The Commissioner of the Department of Banking and Insurance may adopt rules and regulations pursuant to the "Administrative Procedure Act," *P.L.* 1968, *c.* 410 (C.52:14B-1 *et seq.*) to effectuate the purposes of this act.

5. This act shall take effect on the first day of the ninth calendar month following enactment.

Recommendation 5

REQUIRING HEALTH CARE PROFESSIONALS TO REPORT FRAUD BY COLLEAGUES

AN ACT creating a colleague reporting provision applicable to health care professionals.

BE IT ENACTED by the Senate and the General Assembly of the State of New Jersey:

1. a. A health care professional shall promptly notify the director of the Division of Consumer Affairs for referral to the appropriate professional board if that health care professional is in possession of information which reasonably indicates that another health care professional has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient or to the public health, safety and welfare. A health care professional who fails to so notify the director is subject to disciplinary action and civil penalties pursuant to sections 8, 9 and 12 of *P.L.*1978, *c.* 73 (C.45:1-21 to 22 and 45:1-25). For purposes of this act, "health care professional" means a physician, medical resident, intern, podiatrist, bioanalytical laboratory director, physician assistant, acupuncturist, dentist, chiropractor, psychologist, physical therapist, pharmacist, nurse, social worker, marriage counselor, respiratory therapist, ophthalmic dispenser, audiologist, speech language pathologist, hearing aid dispenser, orthotist or prosthetist.

b. A health care professional shall promptly notify the director of the Division of Consumer Affairs for referral to the appropriate professional board if that health care professional is in possession of information which reasonably indicates that another health care professional has engaged in fraudulent conduct in connection with the rendition of or billing for medical or psychiatric services. A health care professional who fails to so notify the director is subject to disciplinary action pursuant to sections 8 and 9 of *P.L.*1978, *c.* 73 (C.45:1-21 and 45:1-22). The director shall immediately provide to the Office of Insurance Fraud Prosecutor a copy of any report which indicates that a health care professional has engaged in fraudulent conduct in connection with the rendition of or billing for medical or psychiatric services.

c. There shall be no private right of action against a health care professional for failure to comply with the reporting requirements of this section.

d. A health care professional who notifies the director about another health care professional who is impaired or grossly incompetent or who has demonstrated unprofessional or fraudulent conduct pursuant to this section is not liable for damages to any person for notifying the director, unless the health care professional knowingly provided false information to the director.

e. Notwithstanding the provisions of this section to the contrary, a health care professional is not required to notify the director about an impaired or incompetent health care professional if he or she has knowledge of the health care professional's impairment or incompetence as a result of rendering treatment to the health care professional.

f. If the health care professional is a practitioner within the meaning of section 5 of *P.L.*1989, *c.* 300 (C.45:9-19.5) and has filed a report with the State Board of Medical Examiners in accordance with that section, no additional report shall be required to be filed with the director of the Division of Consumer Affairs pursuant to this section.

2. The director of the Division of Consumer Affairs may adopt rules and regulations pursuant to the "Administrative Procedure Act," *P.L.*1968, *c.* 410 (C.52:14B-1 *et seq.*) to effectuate the purposes of this act.

3. This act shall take effect 90 days following enactment.

Recommendation 6

AMENDMENTS TO THE INSURANCE FRAUD PREVENTION ACT

AN ACT concerning insurance fraud and revising various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1983, c. 320 (C.17:33A-3) is amended to read as follows:

3. As used in this act:

"Attorney General" means the Attorney General of New Jersey or his designated representatives.

"Commissioner" means the Commissioner of Banking and Insurance.

["Director" means the Director of the Division of Insurance Fraud Prevention in the Department of Banking and Insurance.

"Division" means the Division of Insurance Fraud Prevention established by this act.**]**

"Health care service" means any examination, evaluation, treatment, care, test, service, product, drug, device, equipment or other item, which is provided or rendered by any person in connection with the diagnosis or treatment of any human ailment, disease, pain, injury, deformity, or mental or physical condition which may be eligible for payment or reimbursement by any insurance company or other payor entity.

"Hospital" means any general hospital, mental hospital, convalescent home, nursing home or any other institution, whether operated for profit or not, which maintains or operates facilities for health care.

"Insurance company" means:

a. Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes (C.17:17-1 et seq.), or Subtitle 3 of Title 17B of the New Jersey Statutes (C.17B:17-1 et seq.);

b. Any medical service corporation operating pursuant to P.L.1940, c. 74 (C.17:48A-1 et seq.);

c. Any hospital service corporation operating pursuant to P.L.1938, c. 366 (C.17:48-1 et seq.);

d. Any health service corporation operating pursuant to P.L.1985, c. 236 (C.17:48E-1 et seq.);

e. Any dental service corporation operating pursuant to P.L.1968, c. 305 (C.17:48C-1 et seq.);

f. Any dental plan organization operating pursuant to P.L.1979, c. 478 (C.17:48D-1 et seq.);

g. Any insurance plan operating pursuant to P.L.1970, c. 215 (C.17:29D-1);

h. The New Jersey Insurance Underwriting Association operating pursuant to P.L.1968, c. 129 (C.17:37A-1 et seq.);

i. The New Jersey Automobile Full Insurance Underwriting Association operating pursuant to P.L.1983, c. 65 (C.17:30E-1 et seq.) and the Market Transition Facility operating pursuant to section 88 of P.L.1990, c. 8 (C.17:33B-11); **[**and**]**

j. Any risk retention group or purchasing group operating pursuant to the "Liability Risk Retention Act of 1986," 15 U.S.C. S 3901 et seq.**; and**

k. The New Jersey State Health Benefits Program operating pursuant to P.L.1961, c. 49 (C.52:14-17.25 *et seq.*).

"Office of Insurance Fraud Prosecutor" means the Office of the Insurance Fraud Prosecutor established in the Division of Criminal Justice in the Department of Law and Public Safety pursuant to section 32 of *P.L.*1998, *c.* 21 (C.17:33A-16).

"Insurance Fraud Prosecutor" means the Insurance Fraud Prosecutor appointed by the Governor pursuant to section 32 of *P.L.*1998, *c.* 21 (C.17:33A-16).

"Other payor entity" means any person, not included in the definition of "insurance company" contained in this subsection, which is engaged in New Jersey in paying for or reimbursing, whether on its own behalf or in a capacity as a third-party administrator, the cost of services provided in this State under insurance policies or contracts, membership or subscription contracts, or the like, in consideration of premiums or other periodic charges payable to such entity or to an insurance company.

"Pattern" means five or more related violations of P.L.1983, c. 320 (C.17:33A-1 et seq.). Violations are related if they involve either the same victim, or same or similar actions on the part of the person or practitioner charged with violating P.L.1983, c. 320 (C.17:33A-1 et seq.).

"Person" means **[**a person as defined in R.S.1:1-2, and shall include, unless the context otherwise requires, a practitioner**]** **any practitioner, producer, corporation, association, organization, partnership, trust, other institution or entity, health care facility as defined in subsection a. of section 2 of *P.L.*1971, *c.* 136 (C.26:2H-2a), managed care organization or one or more individuals**.

"Principal residence" means that residence at which a person spends the majority of his time. Principal residence may be an abode separate and distinct from a person's domicile. Mere seasonal or weekend residence within this State does not constitute principal residence within this State.

"Practitioner" means a licensee of this State authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of this State whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

"Producer" means an insurance producer as defined in section 2 of P.L.1987, c. 293 (C.17:22A-2), licensed to transact the business of insurance in this State pursuant to the provisions of the "New Jersey Insurance Producer Licensing Act," P.L.1987, c. 293 (C.17:22A-1 et seq.).

"Provider" means any person who is represented to have provided or rendered any health care service and who may be eligible for payment or reimbursement for that service by any insurance company or other payor entity.

"Statement" includes, but is not limited to, any application, writing, notice, expression, statement, proof of loss, bill of lading, receipt, invoice, account, estimate of property damage, bill for services, diagnosis, prescription, hospital or physician record, X-ray, test result or other evidence of loss, injury or expense.

2. Section 4 of *P.L.*1983, *c.*320 (C.17:33A-4) is amended to read as follows:

4. a. A person **[**or a practitioner**]** violates this act if he:

(1) Presents or causes to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c. 174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or

(2) Prepares or makes any written or oral statement that is intended to be presented to any insurance company, **other payor entity,** the Unsatisfied Claim and Judgment Fund or any claimant thereof in connection with, or in support of or opposition to any claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c. 174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or

(3) Conceals or knowingly fails to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled; or

(4) Prepares or makes any written or oral statement, intended to be presented to any insurance company, **other payor entity,** or producer for the purpose of obtaining:

(a) a motor vehicle insurance policy, that the person to be insured maintains a principal residence in this State when, in fact, that person's principal residence is in a state other than this State; or

(b) an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract; or

(5) Conceals or knowingly fails to disclose any evidence, written or oral, which may be relevant to a finding that a violation of the provisions of paragraph (4) of this subsection a. has or has not occurred.

b. A person **[**or practitioner**]** violates this act if he knowingly assists, conspires with, or urges any person or practitioner to violate any of the provisions of this act.

c. A person **[**or practitioner**]** violates this act if, due to the assistance, conspiracy or urging of any person or practitioner, he knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this act.

d. A person **[**or practitioner**]** who is the owner, administrator or employee of any hospital violates this act if he knowingly allows the use of the facilities of the hospital by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this act.

e. A person **[**or practitioner**]** violates this act if, for pecuniary gain, for himself or another, he directly or indirectly solicits any person **[**or practitioner**]** to engage, employ or retain either himself or any other person to manage, adjust or prosecute any claim or cause of action, against any person, for damages for negligence, or, for pecuniary gain, for himself or another, directly or indirectly solicits other persons to bring causes of action to recover damages for personal injuries or death, or for pecuniary gain, for himself or another, directly or indirectly solicits other persons to make a claim for personal injury protection benefits pursuant to P.L.1972, c. 70 (C.39:6A-1 et seq.); provided, however, that this subsection shall not apply to any conduct otherwise permitted by law or by rule of the Supreme Court.

3. Section 5 of *P.L.* 1983, *c.* 320 (C.17:33A-5) is amended to read as follows:

5. a. Whenever the **[**commissioner**]** **Attorney General** determines that a person has violated any provision of P.L.1983, c. 320 (C.17:33A-1 et seq.), the **[**commissioner**]** **Attorney General** may either:

(1) bring a civil action in accordance with subsection b. of this section; or

(2) levy a civil administrative penalty and order restitution in accordance with subsection c. of this section.

In addition to or as an alternative to the remedies provided in this section, **[**the commissioner may request**]** the Attorney General [to] **may** bring a criminal action under applicable criminal statutes. Additionally, nothing in this section shall be construed to preclude the **[**commissioner**]** **Attorney General** from referring the matter to appropriate state licensing authorities **[**, including the insurance producer licensing section in the Department of Banking and Insurance,**]** for consideration of licensing actions, including license suspension or revocation.

b. Any person who violates any provision of P.L.1983, c. 320 (C.17:33A-1 et seq.) shall be liable, in a civil action brought by the **[**commissioner**]** **Attorney General** in a court of competent jurisdiction, for a penalty of not more than $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation. The penalty shall be paid to the commissioner to be used in accordance with subsection e. of this section. The court shall also award court costs and reasonable attorneys' fees to the **[**commissioner**]** **Attorney General**.

c. The **[**commissioner**]** **Attorney General** is authorized to assess a civil and administrative penalty of not more than $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation of any provision of P.L.1983, c. 320 (C.17:33A-1 et seq.) and to order restitution to any insurance company or other person who has suffered a loss as a result of a violation of P.L.1983, c. 320 (C.17:33A-1 et seq.). No assessment shall be levied pursuant to this subsection until the violator has been notified by certified mail or personal service. The notice shall contain a concise statement of facts providing the basis for the determination of a violation of P.L.1983, c. 320 (C.17:33A-1 et seq.), the provisions of that act violated, a statement of the amount of civil penalties assessed and a statement of the party's right to a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.). The noticed party shall have 20 calendar days from receipt of the notice within which to deliver to the **[**commissioner**]** **Attorney General** a written request for a hearing containing an answer to the statement of facts contained in the notice. After the hearing and upon a finding that a violation has occurred, the **[**commissioner**]** **Attorney General** may issue a final order assessing up to the amount of the penalty in the notice, restitution, and costs of prosecution, including attorneys' fees. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order.

Any penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.A. **[**2A:58-1**]** **2A:58-10** et seq. The Superior Court shall have jurisdiction to enforce the provisions of the "the penalty enforcement law" in connection with P.L.1983, c. 320 (C.17:33A-1 et seq). Any penalty collected pursuant to this subsection shall be used in accordance with subsection e. of this section.

d. **[**Nothing in this section shall be construed to prohibit the commissioner and the person or practitioner alleged to be guilty of a violation of this act from entering into a written agreement in which the person or practitioner does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may contain a provision that it shall not be used in a subsequent civil or criminal proceeding relating to any violation of this act, but notification thereof

shall be made to a licensing authority in the same manner as required pursuant to subsection c. of section 10 of P.L.1983, c. 320 (C.17:33A-10). The existence of a consent agreement under this subsection shall not preclude any licensing authority from taking appropriate administrative action against a licensee over which it has regulatory authority, nor shall such a consent agreement preclude referral to law enforcement for consideration of criminal prosecution.**] (Deleted by amendment, *P.L. , c.* (now pending before the Legislature as this bill).**

e. The New Jersey Automobile Full Insurance Underwriting Association and Market Transition Facility Auxiliary Fund (hereinafter referred to as the "fund") is established as a nonlapsing, revolving fund into which shall be deposited all revenues from the civil penalties imposed pursuant to this section. Interest received on moneys in the fund shall be credited to the fund. The fund shall be administered by the commissioner [of Banking and Insurance] and shall be used to help defray the operating expenses of the New Jersey Automobile Full Insurance Underwriting Association created pursuant to P.L.1983, c. 65 (C.17:30E-1 et seq.) or shall be used to help defray the operating expenses of the Market Transition Facility created pursuant to section 88 of P.L.1990, c. 8 (C.17:33B-11).

f. The Attorney General may authorize any person to pay a civil penalty levied under this section by the use of a credit card, and the Attorney General is authorized to require the person to pay all costs incurred by the State in connection with the acceptance of the credit card.

4. Section 7 of P.L.1983, c. 320 (C.17:33A-7) is amended to read as follows:

a. Any insurance company damaged as the result of a violation of any provision of this act may sue therefor in any court of competent jurisdiction to recover compensatory damages, which shall include reasonable investigation expenses, costs of suit and attorneys fees.

b. A successful claimant under subsection a. shall recover treble damages if the court determines that the defendant has engaged in a pattern of violating this act.

c. If a court determines that there is clear and convincing evidence that a practitioner has committed a pattern of violations of this act, a claimant under this section shall be entitled to an accounting from the practitioner. The accounting shall include accurate and complete information concerning all claims of the type or types referred to in this subsection, including the actual services rendered if any, the actual date or dates of each such service, the actual amount charged and intended to be collected for each service, the amount and date of each payment received for each such service, and the source of each such payment. The practitioner shall render the accounting within ninety (90) days of the court's determination, unless the court grants additional time. The court may order that an independent person perform or audit the accounting for accuracy, at the practitioner's expense, and may also order that the practitioner provide additional relevant information to the claimant.

[c.**]** **d.** A claimant under this section shall mail a copy of the initial claim, amended claim, counterclaims, briefs and legal memoranda to the **[**commissioner**]** **Attorney General** at the time of filing of such documents with the court wherein the matter is pending. A successful claimant shall report to the **[**commissioner**]** **Attorney General**, on a form prescribed by the **[**commissioner**]** **Attorney General**, the amount recovered and such other information as is required by the **[**commissioner**]** **Attorney General**.

[d.**]** **e.** Upon receipt of notification of the filing of a claim by an insurer, the **[**commissioner**]** **Attorney General** may join in the action for the purpose of seeking judgment for the payment of a

civil penalty authorized under section 5 of this act. If the **[**commissioner**]** **Attorney General** prevails, the court **[**may**]** **shall** also award court costs and reasonable attorney fees actually incurred by the **[**commissioner**]** **Attorney General**.

[e.**]** **f.** No action shall be brought by an insurance company under this section more than six years after the cause of action has accrued.

5. Section 9 of P.L.1983, c.320 (C.17:33A-9) is amended to read as follows:

a. Any person who believes that a violation of this act has been or is being made shall notify **[**the division**]** **Office of Insurance Fraud Prosecutor** immediately after discovery of the alleged violation of this act and shall send to **[**the division**]** **Office of Insurance Fraud Prosecutor**, on a form and in a manner prescribed by the **[**commissioner**]** **Attorney General**, the information requested and such additional information relative to the alleged violation as **[**the division**]** **Office of Insurance Fraud Prosecutor** may require. The **[**division**]** **Office of Insurance Fraud Prosecutor** shall review the reports and select those alleged violations as may require further investigation. It shall then cause an independent examination or evaluation of the facts surrounding the alleged violation to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists.

b. No person**, insurance company or other payor entity** shall be subject to civil liability for libel, violation of privacy or otherwise by virtue of the filing of reports or furnishing **or sharing** of other information, in good faith and without malice, required **or permitted** by this section or **[**required**]** by the **[**division**]** **Attorney General** as a result of the authority conferred upon **[**it**]** **him** by law.

c. **[**The commissioner may, by regulation, require insurance**]** **Insurance** companies licensed to do business in this State **and other payor entities may be required by regulation** to keep such records and other information as **[**he deems**]** **deemed** necessary for the effective enforcement of this act.

6. Section 11 of P.L. 1983, c. 320 (C. 17:33A-11) is amended to read as follows:

11. Papers, documents, reports, or evidence relative to **[**the subject of**]** an investigation under this act shall **be considered confidential and privileged and shall** not be subject to public inspection except as specifically provided in this act. **Neither the Attorney General nor any employee engaged in the administration of this act or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for the use in any action or proceeding except when the records or files or the facts shown thereby are directly involved in an action or proceeding under the provisions of this act, or in any lawful proceeding for the investigation and prosecution of any violation of the criminal provisions of any law of this or another State.** The **[**commissioner**]** **Attorney General** shall not detain subpenaed records after an investigation is closed or, if a claim for a civil penalty is filed by the **[**commissioner**]** **Attorney General** pursuant to section 5 or subsection d. of section 7, upon final disposition of the claim by a court of competent jurisdiction, whichever shall be the later date. Subpenaed records shall be returned to the persons from whom they were obtained. The **[**commissioner**]** **Attorney General** may, in his discretion, make relevant papers, documents, reports, or evidence available to the **[**Attorney General**]** an appropriate licensing authority, law enforcement agencies, an insurance company or insurance claimant injured by a violation of this act, consistent with the purposes of this act and under such conditions as he deems appropriate. **[**Such papers,

documents, reports, or evidence shall not be subject to subpena, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines that the commissioner would not be unnecessarily hindered by such subpena. Division**]** **Office of the Insurance Fraud Prosecutor** investigators and insurance company fraud investigators shall not be subject to subpena in civil actions by any court of this State to testify concerning any matter of which they have knowledge pursuant to **[**a pending**]** **an** insurance fraud investigation by the **[**division**]** **Office of the Insurance Fraud Prosecutor**, or a **[**pending**]** claim for civil penalties initiated by the **[**commissioner**]** **Attorney General**.

7. This act shall take effect immediately.